

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 258 of 1985

in

SPECIAL CIVIL APPLICATION No 5491 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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J S SHAH

Versus

M C SHAH  
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Appearance:

Mr. M.V. Patel & A.Y. Kogje for MR IM PANDYA  
for Appellant.  
Ms. Manisha Lavkumar for M/S MG DOSHIT & CO  
for Respondent No. 1, 2  
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CORAM : MR.JUSTICE R.K.ABICHANDANI

and

Date of decision: 17/08/2000

ORAL JUDGEMENT ( Per: R.K. Abichandani,J.)

The appellant challenges the order dated 16th April, 1985 passed by the learned Single Judge rejecting his petition in which he had claimed that he should be appointed as a Dresser in the Civil Hospital, Gandhinagar.

2. The appellant had challenged the order dated 23-10-1984 by which he was required to resume his duty as Safai Kamdar on the ground that he ought to have been appointed as a Dresser. The learned Single Judge held that the appellant was only a daily wager Dresser and the Rules regarding recruitment to the post of Dresser provided that Class IV servants who had put in five years experience were eligible for such promotion. It was held that the petitioner did not meet with that criteria and that he could not claim the post of Dresser. The learned Judge observed that as and when the appellant became eligible for promotion or direct selection, he may make an application for such post and that it was for his choice whether he should accept the appointment as a Class IV servant or not.

3. Learned Counsel for the appellant contended that the appellant was appointed on 6-8-1982 vide order at Annexure "A" to the petition as a Dresser, and therefore, he ought not to have been posted as a Class IV Safai Kamdar.

4. When we turn to the order dated 6-8-1982, it is clear that the appellant was only one of the employees who were engaged as daily wagers for the period between 1-7-1982 and 31-7-1982 in leave vacancies. This type of appointment could not have created any right in favour of the appellant for being posted as a Dresser. Since the petitioner had no right for any such appointment, the learned Single Judge was perfectly justified in refusing to grant any relief to the petitioner in respect of his claim to the post of Dresser. The appeal is, therefore, dismissed with no orders as to costs.

However, since the appellant has in the past worked as a daily wager, if he has become eligible for the post in question and makes an application for it, the concerned authorities may sympathetically consider the same in accordance with the rules and regulations having

regard to his performance as a daily wager Dresser.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)

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